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# **Alternative models of youth justice: lessons from Scotland and Northern Ireland**

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## **Abstract:**

### **Purpose**

Widespread criticism of the youth justice system in England and Wales has resulted in calls for it to adopt a restorative paradigm. This article reviews the historical development of youth justice in neighbouring Scotland and Northern Ireland.

### **Design/methodology/approach**

The historical development of youth justice in Scotland and Northern Ireland is reviewed with a view to learning lessons from these two very different models, compared to the current model in England and Wales.

### **Findings**

It is argued that those tasked with reforming the system in England and Wales must understand the underlying political, cultural and social contexts in which alternative models have developed and satisfactorily resolve the conflicting needs and rights of the offender versus those of the victim, community and wider public.

### **Originality/value**

Transfer of policy and practice from other jurisdictions requires careful consideration of their political, cultural and social contexts but England and Wales may benefit greatly from adopting restorative practices similar to those in Northern Ireland. However, successful implementation will depend on political will and institutional infrastructure.

### **Keywords:**

Youth justice; restorative practice; child welfare; Scotland; Northern Ireland.

## **Introduction**

Since the introduction in the 19<sup>th</sup> Century of reformatories and industrial schools to deal with young people who offend, there have been many reviews of and transformations in UK systems of youth justice. Over the last 10 to 15 years, however, youth justice has experienced particular turmoil, reflecting increasing political oscillation and uncertainty over the most appropriate course of action in dealing with young offenders. Youth justice systems in all UK jurisdictions have been subject to some alteration as a result of changes to the political landscape and the introduction of several international conventions, including the *UN Convention on the Rights of the Child* (UNCRC) and associated rules and guidelines. While bringing some important benefits, there are also concerns that such changes have undermined aspects of the principles underlying UK justice systems. In particular, academics have condemned the increasing politicisation of youth justice (McAra, 2004), the flawed evidence base underpinning the reliance on a risk prevention paradigm (Case, 2007) and the relentless implementation of punitive policies, which increasingly violate young people's human rights (Goldson & Muncie, 2006).

The structure and doctrine of youth justice in England and Wales is under particular scrutiny. A major review by the Independent Commission on Youth Crime and Anti-Social Behaviour, drawing on extensive international evidence (Smith, 2010), advocated a fundamental shift in the philosophy and delivery of youth justice services in England and Wales. In their poignantly titled report *Time for a Fresh Start* (Independent Commission, 2010), the Commission claim the existing system lacks a coherent set of practices, policies and agencies and argues that it is a product of many misguided and ill-considered political decisions that

made only superficial changes to policy and practice. It further argues that fundamental principles of child development, early education and welfare, which held some purchase on the system in earlier decades, have gradually been eroded resulting in limited differentiation between 'young' and 'adult' offenders.

The timing of the Commission's review coincided with a landmark change in UK political leadership, from Labour to a Conservative-Liberal Democrat coalition, and a global economic crisis. Amongst the myriad challenges inherited by the new political administration was a widespread realisation that Labour's 'tough on crime' agenda, which promoted widespread use of incarceration, had resulted in an unsustainable rise in the prison population. Ironically, it was the previous Conservative administration's punitive response to crime, exemplified by Michael Howard's confident claims that 'prison works', which initiated the creation of thousands more prison places during the mid-1990s. Yet in the face of severe economic cutbacks, Justice Secretary Ken Clarke had little choice but to ditch the prison works policy and shift practice, and resource, towards more rehabilitative responses. This decision is a signal that the time is ripe for considering radical new ideas about how to dispense justice in England and Wales. The recent decision to abolish the Youth Justice Board is a significant step and in theory provides the opportunity to have an imaginative debate about designing a new justice system. However, it appears to have had little impact on public debate, even though the transfer of administrative power to the Ministry of Justice runs the risk of having such deliberations obfuscated by overzealous politicians rather than led by well-informed practitioners.

The aim of this article is to reflect on one specific aspect of the Commission's remit, to 'investigate and identify alternative approaches, drawing on promising practice in the United Kingdom' (Independent Commission, 2010, p4). Ultimately, the Commission recommended the adoption of a restorative justice model, similar to that in Northern Ireland, rather than a welfare-based model such as that in Scotland. This article looks closely at both systems in an attempt to crystallise the key messages for those tasked with redesigning youth justice services in England and Wales. Recent history has shown that inter-jurisdictional policy transfer can be dangerous and counterproductive (Jones & Newburn, 2006). Therefore, this article takes a critical look at the context of policy development in these two widely divergent jurisdictions and reflects on the potential pitfalls of transplanting policies and practices from one part of the UK to another. It is argued that policy makers and practitioners need to take account of the existing architectural frameworks and the context in which systems develop and operate before identifying elements of best practice that might be adopted by other UK youth justice systems.

### **The Scottish system of youth justice**

The Scottish legal system has always been separate from the other UK jurisdictions and the 1960s marked a distinct departure from a court-based to a tribunal system of youth justice founded on principles of child welfare. A widespread review by the Kilbrandon Committee (1964) concluded that offending and other forms of troublesome behaviour during childhood were manifestations of deeper rooted problems at both the individual and familial level and that young people should be dealt with on the basis of their 'needs' and not their 'deeds'. In a radical move, the Committee recommended the establishment of a single agency to deal with all children, whether they were referred on offending or broader care and protection grounds, with the best interests of the child paramount in the agency's decision-making process.

The Kilbrandon Committee's proposals were widely supported by the key elites within government and criminal justice institutions, and reflected a strong tradition of democracy within Scottish civic culture (McAra, 2005). The *Social Work (Scotland) Act*, 1968 placed welfare firmly at the centre of criminal justice by replacing probation officers with social workers and abolishing juvenile courts. The new 'children's hearings system' in 1971 took the form of an informal tribunal involving three lay panel members (trained volunteers from

the same communities as the young people themselves) and an officiating Children's Reporter (usually with a social work or legal background). Children up to age 17 could be referred to a hearing, along with their parents, a social worker and other relevant professionals (although hearings for 16 and 17 year olds are rare). The holistic needs of the child were prioritised, regardless of their grounds of referral, and decisions were premised on principles of early and minimal intervention, with a view to avoiding criminalisation and stigmatisation. The hearings system precluded a role for the victim on the basis that most children referred were also victims, either of crime or circumstance.

The hearings system has been held up as a model of excellence for many years and observed by many other international jurisdictions, although there have also been concerns. Asquith (1983), for example, claimed the system's inquisitorial nature could contravene principles of proportionality and subject some children to greater levels of intervention than a court-based system. More recently, Goldson (2004) argued that many young people, especially those aged 16 and 17, were still being dealt with by adult courts. And despite its welfare-based nature, Scotland still has one of the lowest ages of criminal responsibility, set at eight by the *Children and Young Persons (Scotland) Act, 1937*. The *Criminal Justice and Licensing (Scotland) Bill, 2010* revoked the power of the Crown to prosecute children under 12 in an adult court; however, children are still considered mentally capable of committing a crime in Scotland at the age of eight. In practice, those under the age of 16 are mainly dealt with by the children's hearings system and rarely end up in court.

Scotland's welfare-based youth justice framework remained unchanged until recently when a number of major legislative and policy shifts transformed the welfare-based system by introducing a range of political and managerial imperatives informed by notions of public protection, risk management, offender accountability and evidence-based practice (McAra, 2006). The first major change was prompted by the *Children (Scotland) Act, 1995*, which tempered the principle of decision making in the child's best interests by introducing a caveat based on notions of risk posed by the child. This marked the start of a competing set of rationales for youth justice in Scotland, whereby welfare was no longer the primary consideration.

Immediately following devolution in 1999, youth offending surged to the forefront of the new Scottish Executive's policy agenda and a series of policy reports and action plans were published, including *Safer Communities in Scotland* (1999), *It's a Criminal Waste: Stop Youth Crime Now* (2000) and *Scotland's Action Programme to Reduce Youth Crime* (2002). A recurrent theme was the emphasis on responsibility and accountability, arguably undermining the holistic Kilbrandon ethos, which emphasised needs and vulnerability. Political rhetoric continued to place an emphasis on welfare, such as the publication of the *Getting it Right for Every Child* policy agenda (Scottish Executive, 2005); however, this was undermined by an underlying crime control agenda fuelled by hard-edged populist rhetoric. This reached its peak in the mid-2000s when the Labour led government introduced a series of tough performance targets, including a 10% reduction in the number of serious and persistent young offenders in Scotland, and created a plethora of new legislation targeted at young people, including Anti-Social Behaviours Orders, Dispersal Orders and Acceptable Behaviour Contracts. A proliferation of new institutions emerged, including youth justice teams, community safety partnerships and community justice authorities, which were tasked with strategic planning and/or delivery of youth offender services; and the role of the voluntary sector in providing programmes for young offenders, including mediation and restorative justice, also expanded. The children's hearings system remained core to the architecture of the youth justice system, but it was arguably undermined and weakened by these wider developments and the politicisation of youth justice (Whyte, 2003; McAra, 2005).

A change of government in 2007 signalled a new chapter in Scottish youth justice history. The Scottish Nationalists adopted a more measured approach to policy development and,

consequently, the most recent framework for action *Preventing Offending by Young People* (Scottish Government, 2008) contains a more convincing commitment to early and holistic intervention and the principles of the UNCRC. Nevertheless, this framework continues to reflect a shift in ethos away from a primarily welfare-based system to one governed by an eclectic set of rationales, strongly influenced by principles of public protection and risk management (McAra & McVie, 2010a). A key source of concern is that programmes aimed at behavioural change, which focus on criminogenic, rather than general welfare, may criminalise and stigmatise young people.

Despite its lengthy history, empirical research on youth justice interventions in Scotland has been modest in scale and somewhat contradictory in its conclusions (Hill *et al*, 2005). Kilbrandon envisaged that a welfare-based system with a founding commitment to decriminalisation and destigmatisation would be better placed than others to reduce offending among young people. However, evidence from a major Scottish longitudinal study suggests that welfare-based systems can also have potentially damaging consequences. The Edinburgh Study of Youth Transitions and Crime found that selection processes determining entry to the children's hearings system ensured that certain categories of young people – 'the usual suspects' – were propelled into a repeat cycle of referral, whereas other equally serious offenders remained unknown to the system (McAra & McVie 2005). The deeper these *usual suspects* penetrated the youth justice system, the more likely it was that they failed to desist from involvement in serious offending compared to carefully matched comparison groups. There is evidence that the *principles* underpinning the system are sound, as the same study also found that involvement in serious offending was strongly linked to individual vulnerability and social adversity. Yet those young people who were determined to be most needy according to children's hearings records were at greatest risk of making the transition from the youth system to the adult criminal justice system (McAra & McVie, 2010b). Despite its welfarist ethos, it appears that the implementation of the system is failing many young people.

### **The Northern Ireland system of youth justice**

The youth justice system in Northern Ireland shares its history with England and Wales, as it was shaped by the same legislation and policy developments. Only since 1998 has the legislative frameworks governing youth justice in these jurisdictions diverged significantly. Nevertheless, the delivery of youth justice services in Northern Ireland has for a long time had a somewhat distinctive character, shaped during the time of the troubles by a general culture of suspicion towards authority (Goldson, 2004). As a result, there has been a longstanding tradition of youth justice provision delivered at the community level by voluntary sector services rather than core state provision. Muncie (2011) argues that the geopolitics of Northern Ireland allowed for the development of a more enlightened system of youth justice, which was facilitated by the prevailing approach to resolving political conflict. It is hardly surprising then that a major consultation on the criminal justice system conducted in 1998 by the Criminal Justice Review Group recommended the widespread introduction of community based restorative practices for young people aged 10 to 17 as the philosophical basis for youth justice in Northern Ireland (CJRG, 2000).

The review placed strong emphasis on human rights principles and practices using mediation, negotiation and dialogue, which were reflective of the conflict resolution principles underpinning the 1998 *Good Friday Agreement*. The proposals of the Review Group were largely enacted by the *Justice (Northern Ireland) Acts* of 2002 and 2004, which demonstrated a commitment to alternatives to custody for children and young people but also highlighted their responsibilities to the wider society. The 2002 *Act* declared the principal aim of the youth justice system to be 'to protect the public by preventing offending by children' (section 53, p1), with the overarching responsibility being to encourage children 'to recognise the effects of crime and take responsibility for their actions' (section 53, p2). A primarily justice-based system, there was some nod to child welfare in that agencies were told to 'have regard

*to the welfare of children*' (section 53, p3). However, Convery and colleagues (2008) point out that there was no an increase in the age of criminal responsibility, which remains age 10 in line with England and Wales, and Haydon (2009) is critical of the failure of both *Acts* to recognise explicitly children's rights in policy and practice, including the principle of the child's best interests (UNCRC, Article 3).

A new Youth Justice Agency (YJA) was established in 2003 to administer the youth justice system and oversee the introduction of a myriad of new disposals, including Reparation Orders, Community Responsibility Orders, Custody Care Orders for under 14 year olds, and Youth Conference Orders. Contrary to other parts of the UK, where restorative practice is often sporadic and dependent on piecemeal funding, Northern Ireland ensured that restorative practice was integrated across the criminal justice process (Haydon, 2009). Diversionary powers were introduced allowing the police to administer informal warnings and restorative cautions; the Public Prosecution Service (PPS) to offer diversionary youth conference orders; and the courts to impose a statutory order at sentence. Facilitated by specialist coordinators, youth conferences bring the offender together with the victim (where possible) and various professionals to discuss the details of the offence and its impact on the victim, and work collaboratively towards an action plan for the offender. The plan is then submitted to the PPS or the court and, if accepted, is implemented and monitored by a member of the YJA. If rejected, the offender faces prosecution or an alternative sentence (Jacobson & Gibbs, 2009).

The first Youth Conference Service was established in Belfast in 2003, and others followed throughout Northern Ireland; however, the suspension of the Northern Ireland Assembly between 2002 and 2007 delayed the development of an effective strategy for change. A ten year strategy for children and young people in Northern Ireland was finally announced by the Office of the First Minister and Deputy First Minister in 2006, advocating the adoption of restorative justice principles into its youth justice system and aligning itself with the UNCRC. However, Convery and colleagues (2008) are critical that UNCRC recommendations about age of criminal responsibility and reducing the use of custody for very young children were not progressed. They also claim that the strategy failed to address issues around the high levels of poverty and social exclusion in Northern Ireland, and the fact that many children were still living under threat of enforced exile or punishment by paramilitaries or local vigilantes.

The YJA praises itself as a '*world leader in addressing, in a balanced way, youth crime, the concerns of victims and the safety of communities*' (YJA, 2009, p12). Although early days in the life of the system, several studies and strategic reviews to evaluate the effectiveness of youth conferencing in Northern Ireland have shown promising results. Victim participation and levels of satisfaction have been high, compared to other schemes (Campbell *et al*, 2005). The use of custody for young offenders has declined as the use of youth conferencing has increased (Jacobsen & Gibbs 2009). Young offenders themselves have found conferencing to be a positive experience, helping them go get their lives back on track and encouraging them to desist from crime (Maruna *et al*, 2007). The impact of youth conferences on individual re-offending is still uncertain, although aggregate recidivism rates are lower than for community or custodial sentences (Jacobson & Gibbs, 2009).

There are indications that this new system is not without its problems, however. The Criminal Justice Inspection Northern Ireland (CJINI) found that the Youth Conferencing Service was operating at the boundaries of both capacity and resource and recommended that it '*fundamentally review its operating structures to ensure a more integrated approach to youth offending and the continued effective delivery of the conferencing service*' (CJINI, 2008: vii). The lack of attention to welfare needs has also been criticised, as Haydon (2009) points out that Northern Ireland has greater levels of social deprivation than other UK jurisdictions, but significantly less expenditure on personal and social services. The UNCRC, 2008 highlighted the need for greater attention to children's mental health in Northern Ireland as a result of the

long-term impact of the troubles. While custody levels for young people have reduced overall, there has been criticism of the non-implementation of the section of the 2002 *Act* which stipulated keeping 10 to 13 year olds out of custody (Haydon, 2009). Of those receiving custodial sentences, many are not serious or persistent offenders, but merely troubled children with whom the police or courts have lost patience (Convery *et al*, 2008).

For individual offenders, the picture is also somewhat mixed. The experiences of some young offenders were positive, but others found youth conferences to be frustrating, demeaning, punitive and shaming (Maruna *et al*, 2007). Some also feel excluded from decision making processes and marginalised from the process (Haydon, 2007). Importantly, the restorative system appears particularly poorly equipped to deal with persistent offenders. The CJINI (2008) reported that the effectiveness of the system was diminished amongst those who had experienced multiple conferences, and recommended development of a repository of programmes and interventions designed to deal with difficult young people. Maruna and colleagues (2007) also found that for those with prolific offending histories, the conferences either had no impact and the young people often continued to offend, or the experience of the conference was so negative that it increased their offending as a result of labelling or provoking defiance. Conference outcomes have also raised controversy. Campbell and colleagues (2005) found that the majority of young offenders and victims were 'happy to agree' to the conference plan, however, satisfaction was lower amongst offenders than victims. Further, offenders' perceptions of the legitimacy of the conferencing system are undermined when the PPS or the courts reject the plan (Maruna *et al*, 2007).

Like other parts of the UK, Northern Ireland has not been immune to wider political pressure to actively reduce general disorder amongst children and young people. For instance, Anti-Social Behaviour Orders were introduced in Northern Ireland in 2004 for children as young as 10 (Muncie, 2011). Convery and colleagues (2008) argue that this has weakened the children's rights framework to some extent by imposing a broader risk management approach to political decision making and criminalising many more young people. However, evidence suggests that they are very rarely and inconsistently used, with only 37 ASBOs for under 18s being imposed between 2004 and 2008 (Haydon, 2009).

### **Implications for policy development in England and Wales**

The UK has a diverse and eclectic set of justice systems, which have widely divergent roots and striking differences in terms of principles and practice. McAra (2010) has identified four paradigms that dominate youth justice discourse: just deserts, welfare, restoration and actuarialism. Each paradigm has a different mode of response to youth offending and a different way or prioritising the needs and rights of the child against those of wider society. McAra argues that modern systems of youth justice in most European jurisdictions, including the UK, now feature competing elements of all four paradigms based on different ideas about what causes young people to offend, how they should be dealt with and who should administer interventions. The greater the degree of conflict between paradigms, the more youth justice systems become incoherent and ambivalent towards children. Scotland has a primarily welfarist paradigm, while Northern Ireland is restorative in orientation. England and Wales, in contrast, lack an orienting vision and the approach comprises an eclectic mix of policies and interventions. The implications for children and young people who offend in different parts of the UK are, consequently, profound in terms of who takes responsibility for them, what role they play in the process and the extent to which decision making is predicated on their needs as opposed to those of others, particularly their victims.

The systems of youth justice in Scotland and Northern Ireland have developed within very specific political, cultural and social contexts and, to a large extent, reflect the underlying moral frameworks of the governing institutions and elite practitioner groups. While both systems have been subject to erosion, in the form of wider political imperatives imposed as a result of pressure from outwith their native jurisdictions, they have held fast to the distinctive

architectures and underlying philosophies that shaped them. As a result, they have proven to be resistant to fundamental change despite the recent periods of political turmoil that have shaped policy development. However, neither system can be argued to be without its problems – perhaps arising from implementation rather than principle. In particular, there are concerns about the long-term impacts on those young people who are the most serious and persistent offenders, and for whom contact with the youth justice system is sustained over a long period of time.

The Commission has modelled its blueprint for England and Wales on a restorative justice model, strongly reflecting the system that has developed in Northern Ireland. This makes a great deal of sense in terms of their shared histories, and it is clear from the evaluation carried out so far that the youth conferencing model has many advantages over the current system in England and Wales, particularly in terms of its potential to reduce custody rates for young people. Given the very distinctive nature of the political process in Northern Ireland and the strong existing commitment to community based service delivery which facilitated the development of a restorative model of justice, it begs the question as to whether there is a strong enough political will or institutional infrastructure to support the widespread implementation of a similar set of policies and practices in England and Wales.

What then of the lessons that can be learned from the Scottish system? It is certainly true that Scotland's welfare system has been subject to challenge and that some aspects of its resilience have been weakened by political interference. However, the Scottish system is premised on the rights of the child and, therefore, fits more tightly within the framework of the UNCRC. There is strong support both from the academic literature and the international community that young people who offend often have significant underlying needs, and failure to address these needs is a violation of their human rights. It might be argued that Scotland fails to meet the human rights of victims (and, arguably, the broader public), by denying them a legitimate voice in the youth justice process. However, the restorative model adopted by Northern Ireland has also struggled to resolve the tension between providing a system that both promotes the best interests of children and achieves the overarching objectives of the youth justice system, which are public protection and crime prevention. Importantly, neither the Scottish nor the Northern Irish system have been subjected to rigorous longitudinal evaluation, particularly during recent periods of very rapid transition. Therefore, there is still much to be learned about impact of both alternative models of justice.

Wholesale transfer of policies and/or practices from one jurisdiction to another is never without practical, political, financial and moral consequences. Policy makers and practitioners looking to their neighbours to identify elements of best practice that might be applied to their own jurisdiction need to look much further than whether or not the underlying architecture is the same or the evaluations have proven positive. It is also important to consider the specific context and the environment, not only in which the alternative system exists, but also from which it originated. In the post devolution period, the political contexts within UK jurisdictions have come to vary greatly and the historical transitions shaping their youth justice systems are widely divergent. It is important to ask, therefore, how comfortably aspects of either the Scottish or Irish system would sit currently within England or Wales. There is a danger that launching into a new programme of activity, driven by political and financial imperatives rather than concern about the social and economic welfare of young people, may result in lost opportunities and money wasted on expensive, ineffective and potentially damaging interventions. This is particularly pertinent at a time when the role of the Youth Justice Board is about to be adopted by the Ministry of Justice which may make policy subject to greater politicisation, thus subverting any shift in philosophy away from punitive measures of intervention.

## **Summary of policy and practice implications**



- Youth justice in England and Wales needs a clear philosophical vision underpinned by coherent and mutually reinforcing policies.
- Transfer of policy and practice from other jurisdictions requires careful consideration of their political, cultural and social contexts.
- England and Wales may benefit greatly from adopting restorative practices similar to those in Northern Ireland; however, successful implementation will depend on political will and institutional infrastructure.
- Those young people who draw most heavily on youth justice systems have the greatest underlying needs, and from that perspective there is much to learn from the Scottish welfare-based children's hearing system.

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